

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0093, Appeal of Gale Cossette, the court on December 5, 2006, issued the following order:

Gale Cossette appeals a decision of the State Board of Education (board) which rejected the recommendation of the hearing officer assigned to her case and accepted the SAU superintendent's decision to remove her. She argues that the board's action deprived her of her right to due process and that, by failing to follow its administrative rules, the board is required to endorse the recommendation of the hearing officer. We vacate and remand.

We will not overturn the board's decision absent an error of law, unless we are satisfied by a clear preponderance of the evidence before it, that the order is unjust or unreasonable. Appeal of Hopkinton Sch. Dist., 151 N.H. 478, 480 (2004); see RSA 541:13 (1997).

In this case, the hearing officer recommended that the board "find that Teacher's removal was without sufficient grounds, and was arbitrary, capricious, or without sufficient reason(s) within the requirements of RSA 189:31." The board voted to reject the recommendation. The board's rules for practice and procedure in adjudicative proceedings provide: "The board shall rule upon any such exceptions and shall reopen or modify the record, if necessary, or appropriate to effectuate relief. The board shall base its review on any errors in the record, and shall request that the hearing officer reconsider based upon the board's discovery of such an error." N.H. Admin. Rules, Ed 211.01 (c). The record provided on appeal does not indicate that the board ever asked the hearing officer to reconsider his recommendation. Moreover, the letter advising the parties of the board's decision contained no findings or rulings to support its decision to reject the hearing officer's recommendations. See RSA 541-A:35 (Supp. 2006). Although the board announced its decision at the end of the hearing, see N.H. Admin Rules, Ed 212.02, the decision was also not accompanied by the requisite findings and rulings.

The appellant also argues that the procedural errors invalidated the board's rejection of the hearing officer's recommendation and that as a result the recommendation was not rejected and should become final. We disagree. We see no reason to depart from our general practice where a tribunal has erred of remanding the case for further consideration consistent with this order. Accordingly, we remand this case so that the board may review it in accordance with the requirements of its administrative rules and the applicable statutes.

Vacated and remanded.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**